

SUBJECT: Licensing lawyers

COMMITTEE: Judiciary: committee substitute recommended

VOTE: 7 ayes--Bush, Hury, Adkisson, Hackney, Hilbert,
Perez, Russell

0 nays

1 present, not voting--Dutton

1 absent--Toomey

WITNESSES: For--Judge William Kilgarlin, Supreme Court of
Texas; Wayne Denton, Board of Law Examiners

Against--David Kaplan, University of Texas Student Bar
Association

DIGEST: CSHB 48 would give the Board of Law Examiners one
year, instead of the current 180 days, to tell filers
of the required Declaration of Intention to Study Law
whether they have been found to have acceptable
character and fitness to practice law. The Supreme
Court would also be required to adopt rules
establishing uniform practices and procedures for the
Board of Law Examiners' district committees, and
providing for guidance and oversight of the committees
by the board.

The Board of Law Examiners would be authorized to
obtain an applicant's criminal-history records from any
law-enforcement agency, including DPS and the FBI. The
board would be empowered to refuse to recommend an
applicant for admission to the bar who failed to
provide a complete set of fingerprints on request.
Information concerning an applicant's criminal record
would be kept confidential and could only be released
by the board on court order or with the consent of the
applicant. The unauthorized disclosure of such
information would be a class-B misdemeanor.

An attorney from another state seeking to practice law
in Texas would be required to have a license to
practice law issued by the other state and to have
practiced law for at least five years. The same person
would also be required to take and pass an examination

DIGEST:
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for a license to practice law in Texas. The requirements for this exam would be established by the Texas Supreme Court. All applicants who are attorneys in other jurisdictions would also be required to furnish satisfactory proof of good moral character and fitness. Any attorney licensed in another state who had a grievance or disciplinary matter pending in another state could not be licensed until such matters were resolved.

The examination and investigation fees for bar applicants would be set by the Supreme Court, and each fee could be raised to a maximum of \$250 per applicant. Funds collected from the examination and investigation fees could be transferred between accounts to satisfy both responsibilities. The application fee for an attorney already licensed in another state could not exceed \$700. The Supreme Court would be permitted to set reasonable fees for additional services provided by the board, but the fee for any single additional service could not exceed \$250. The fees set by the Supreme Court would have to cover all of the board's costs so that no general-revenue funds would be required to operate the board. In addition, compensation for board members would be determined by the Supreme Court, exclusive of reasonable and necessary expenses.

CSHB 48 would also repeal laws granting law licenses, under certain circumstances, to persons with military service.

SUPPORTERS
SAY:

Approximately 95 percent of new Texas law students begin school at the same time each August. They are required to file a Declaration of Intention to Study Law within 120 days after beginning law school, which means that most of the declaration forms arrive right at the 120-day deadline. A large number of declarations are not complete when filed, and often students are not candid about providing the information required. Currently, the board has 180 days to notify the student of his or her status. The board's staff spends much of the allotted time securing from the student fees, documents, and other information. This does not give the staff, or the district committees, sufficient time to complete a thorough investigation of all files. Allowing the board a full year to notify law students of their status would allow a more thorough review of the character and fitness of the students.

SUPPORTERS
SAY:
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Local bar committees are assigned to investigate qualifications for admission to the bar and report whether a person has good moral character and fitness. A high degree of autonomy is currently granted such committees in this work. No statute gives specific oversight authority to the board and each district committee operates under a variety of policies and procedures. Hence the Supreme Court and the board need the authority they would gain under this bill to make policies and procedures consistent statewide.

The board's current method of obtaining interstate criminal information on an applicant is to send written requests to authorities in the jurisdictions that the applicant has listed as previous residences. The board cannot be sure that the applicant has been completely truthful regarding residences or criminal history because the board lacks access to nationwide criminal-history records. Also, information may not be accessible because of restrictions imposed by other jurisdictions. DPS may provide national information to a state agency when the law specifically permits, but not otherwise, so this bill provides the specific authority needed to give the board access to data essential for background checks on would-be lawyers.

Currently, only a few states have less than a five-year practice requirement for out-of-state attorneys seeking admission to their bar. By increasing the corresponding Texas threshold from three to five years, and by requiring out-of-state attorneys to pass an exam, this bill makes sure such out-of-state applicants will be qualified to represent clients in Texas.

The current examination fee is \$65, and the investigation fee is \$75. The expenses relating to the two processes have been steadily increasing over the years. The Supreme Court needs the authority to increase fees up to a specified limit so the board's expenses will be covered. For example, in the future it may be desirable to set a penalty fee for those who fail to file the declaration or apply for the exam on time. Further, it is necessary to provide for the board out of fee revenue since the House Appropriations Committee has recommended that general-revenue funding be eliminated.

Although opponents contend that creating ceilings of \$250 will result in a significant increase in the

SUPPORTERS
SAY:
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amount paid by law students, the Supreme Court will authorize an increase in fees only if it is absolutely necessary. For the next few year, a total increase of \$30 or \$35 should be enough to make up the difference from the loss of general-revenue funds.

OPPONENTS
SAY:

Increasing the time period for notification by the board from 180 days to one year will mean that law students will not know whether they meet the character and fitness qualifications until they are halfway through law school. By that time, a student will have spent thousands of dollars, and thousands of hours, on law school. It is unfair for anyone to spend so much time and money on school, only to find that he or she cannot practice law. In addition, out of the 6,000 investigations conducted last year, only 27 formal hearings were held. If more time is needed to process those 27 files, that's understandable--but to penalize the other 5,973 applicants as well is unfair.

Raising the ceiling on fees to \$250 will result in significant financial problems for many students. Law students already have enough trouble meeting tuition and living expenses. Once authority is given to raise the fees to that level, fees will rise inexorably to that level.

NOTES:

HB 48 as filed would have required that the licensing standards of the state where an out-of-state attorney was licensed equal or exceed Texas standards, in order for that person to be licensed in Texas. It also would have allowed the Supreme Court to adopt rules to determine whether practice in Texas could count toward the five-year requirement for attorneys licensed elsewhere. The original bill did not authorize the Supreme Court to set an application fee of up to \$700 for out-of-state applicants, and it would have barred a felon from receiving a license to practice law in Texas. The original also set a ceiling of \$15,000 per annum on the amount of compensation that could be paid to board members.